

ESTTA Tracking number: **ESTTA538836**

Filing date: **05/20/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hershey Chocolate & Confectionery Corporation
Granted to Date of previous extension	05/22/2013
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES

Attorney information	Paul C. Llewellyn Kaye Scholer LLP 425 Park Avenue New York, NY 10022 UNITED STATES jryniewicz@kayescholer.com, pllewellyn@kayescholer.com, jeischeid@kayescholer.com, Kyle.Gooch@kayescholer.com Phone: 212.836.7828
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Applicant Information

Application No	85704745	Publication date	01/22/2013
Opposition Filing Date	05/20/2013	Opposition Period Ends	05/22/2013
Applicant	Goody Twos Toffee Company, Inc. Suite 116 & 117 6990 E. Shea Blvd. Scottsdale, AZ 85254 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2010/10/01 First Use In Commerce: 2011/04/08 All goods and services in the class are opposed, namely: Chocolate covered pretzels; Chocolate topped pretzels; Kettle corn; Pretzels; Snack mix consisting primarily of crackers, pretzels and/or popped popcorn; Sugar-coated almonds; Toffee; Toffees
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Opposition Filing Date	05/20/2013	Opposition Period Ends	
Applicant	Goody Twos Toffee Company, Inc. Suite 116 & 117 6990 E. Shea Blvd. Scottsdale, AZ 85254 UNITED STATES		

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Class 030. First Use: 2010/10/01 First Use In Commerce: 2011/04/08
 All goods and services in the class are opposed, namely: Chocolate covered pretzels; Chocolate topped pretzels; Kettle corn; Pretzels; Snack mix consisting primarily of crackers, pretzels and/or popped popcorn; Sugar-coated almonds; Toffee; Toffees

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	680105	Application Date	06/20/1958
Registration Date	06/09/1959	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1928/00/00 First Use In Commerce: 1928/00/00 CANDY		

U.S. Registration No.	1237555	Application Date	04/21/1982
Registration Date	05/10/1983	Foreign Priority Date	NONE
Word Mark	SUPER TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/04/00 First Use In Commerce: 1979/04/00 Candy-Namely, Licorice		

U.S. Registration No.	1889412	Application Date	10/25/1993
Registration Date	04/11/1995	Foreign Priority Date	NONE
Word Mark	TWIZZLERS PULL-N-PEEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/05/13 First Use In Commerce: 1994/05/13 candy		

U.S. Registration No.	3146243	Application Date	12/11/2003
Registration Date	09/19/2006	Foreign Priority	NONE

		Date	
Word Mark	TW		
Design Mark			
Description of Mark	The mark consists of a rectangle in which the letters T and W are partially shown. No color is claimed as part of the mark.		
Goods/Services	Class 020. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 Point of purchase displays Class 030. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 candy		

U.S. Registration No.	3881145	Application Date	08/19/2009
Registration Date	11/23/2010	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2010/01/25 First Use In Commerce: 2010/01/25 Frozen confections		

U.S. Registration No.	4152610	Application Date	01/18/2011
Registration Date	06/05/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED MADE WITH REAL HERSHEY'S CHOCOLATE NATURALLY AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of "TWIZZLERS" in white stylized letters outlined in blue and red against a red background in the top portion, a stylized design of two pieces of brown chocolate flavored candy, "LOW FAT" and "TWISTS" in yellow, "SNACK" and "TOTALLY TWISTED" with an arrow in white, with a wavy brown band across the lower portion containing the wording "MADE WITH REAL HERSHEY'S CHOCOLATE NATURALLY AND ARTIFICIALLY FLAVORED" in white. The white band shown in the drawing represents clear, see-through packaging. The dotted lines around the mark are intended to show placement of the mark on the package.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4120463	Application Date	01/18/2011
Registration Date	04/03/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED BLUE RASPBERRY AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of "TWIZZLERS" in white stylized letters outlined in blue and red against a red background in the left portion with a stylized design of two pieces of blue candy, the words "LOW FAT" and "TWISTS" in yellow, "TOTALLY		

	TWISTED", "SNACK", "BLUE RASPBERRY", "ARTIFICIALLY FLAVORED" and an arrow in white, with a wavy blue band across the right side portion with two purple berries. The white band shown in the drawing represents clear, see-through packaging. The dotted lines around the mark are intended to show placement of the mark on the package.
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy

U.S. Registration No.	4120462	Application Date	01/18/2011
Registration Date	04/03/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS FILLED TWISTS LOW FAT SNACK TANGY FILLING SWEET & SOUR CHERRY KICK CITRUS PUNCH NATURALLY AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of "TWIZZLERS" in white stylized letters outlined in blue and red against a red background in the left portion with a stylized design of two pieces of red and yellow candy, the wording "LOW FAT" and "FILLED TWISTS" is depicted in yellow, "SNACK" and "TANGY FILLING" with an arrow in white, with a wavy yellow band across the right side portion with two red cherries having green and brown stems, a piece of orange and white citrus fruit and the words "SWEET & SOUR", "CHERRY KICK", "CITRUS PUNCH" and "NATURALLY AND ARTIFICIALLY FLAVORED" in red against a yellow background. The white band shown in the drawing represents clear, see-through packaging. The dotted lines around the mark are intended to show placement of the mark on the package.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4120456	Application Date	01/10/2011
Registration Date	04/03/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS NIBS CANDY LOW FAT SNACK LITTLE NIBBLES LICORICE NATURALLY AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of "TWIZZLERS" in white stylized letters outlined in blue and red against a red background, a stylized design of two black pieces of candy, the wording "LOW FAT" and "NIBS CANDY" in yellow, "SNACK" and "LITTLE NIBBLES" with an arrow in white. The wavy white band represents clear, see-through packaging. The lower wavy black band contains the wording "LICORICE" and "NATURALLY AND ARTIFICIALLY FLAVORED" in white. The dotted lines around the mark are intended to show placement of the mark on the package.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4107653	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED LICORICE		

	NATURALLY AND ARTIFICIALLY FLAVORED TWIZZLERS TWISTS LICORICE NATURALLY AND ARTIFICIALLY FLAVORED
Design Mark	
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and black from left to right. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. In the center left of the rectangular shape is the phrase "TWIZZLERS TWISTS" repeated twice in the same color scheme where the word "TWIZZLERS" is in white with a red and blue border and the word "TWISTS" is in yellow. Above and below "TWIZZLERS TWISTS" is a design of black candy with the words "TOTALLY TWISTED" and an arrow design all in white at the top of the candy design. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. At the right of the rectangle design are the words "LICORICE NATURALLY AND ARTIFICIALLY FLAVORED" in white repeated twice at the middle and bottom of the black wavy band.
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy

U.S. Registration No.	4107652	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED LICORICE NATURALLY AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and black from top to bottom. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. On the rectangular shape is the word "TWIZZLERS" in white with a blue and red border. Above and below the word is a design of black candy with the words "TOTALLY TWISTED" and an arrow design all in white at the top of the candy design. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath the word "TWIZZLERS" is the word "TWISTS" in yellow. At the bottom of the rectangle design are the words "LICORICE NATURALLY AND ARTIFICIALLY FLAVORED" in white.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4107651	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED STRAWBERRY ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and red from left to right. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. On the rectangular shape is the word "TWIZZLERS" in white with a blue and red border. Above and below the word is a design of red candy with the words "TOTALLY TWISTED" and an arrow design all in white at the top of the candy design. To the left of the		

	candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath the word "TWIZZLERS" is the word "TWISTS" in yellow. At the right of the rectangle design is a design of red and yellow strawberries with green leaves and the words "STRAWBERRY ARTIFICIALLY FLAVORED" in white.
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy

U.S. Registration No.	4107650	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED STRAWBERRY ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and red from top to bottom. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. On the rectangular shape is the word "TWIZZLERS" in white with a blue and red border. Above and below the word is a design of red candy with the words "TOTALLY TWISTED" and an arrow design all in white at the top of the candy design. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath the word "TWIZZLERS" is the word "TWISTS" in yellow. At the bottom of the rectangle design is a design of red and yellow strawberries with green leaves and the words "STRAWBERRY ARTIFICIALLY FLAVORED" in white.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4107648	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	LOW FAT SNACK LITTLE NIBBLES TWIZZLERS NIBS CANDY CHERRY ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and pink from top to bottom. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. On the rectangular shape is the word "TWIZZLERS" in white with a blue and red border. Above the word is a design of red candy with the words "LITTLE NIBBLES" and an arrow design all in white. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath the word "TWIZZLERS" are the words "NIBS CANDY" in yellow. At the bottom of the rectangle design is a design of red cherries with green stems and the words "CHERRY ARTIFICIALLY FLAVORED" in white.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4107647	Application Date	01/10/2011
Registration Date	03/06/2012	Foreign Priority Date	NONE

Word Mark	LOW FAT SNACK BITE SIZED TWIZZLERS BITES CHERRY ARTIFICIALLY FLAVORED
Design Mark	
Description of Mark	The mark consists of a rectangular shape broken into three wavy bands colored red, white and pink from top to bottom. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. On the rectangular shape is the word "TWIZZLERS" in white with a blue and red border. Above the word is a design of red candy with the words "BITE SIZED" and an arrow design all in white. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath the word "TWIZZLERS" is the word "BITES" in yellow. At the bottom of the rectangle design is a design of red cherries with green stems and the words "CHERRY ARTIFICIALLY FLAVORED" in white.
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy

U.S. Registration No.	4011567	Application Date	12/09/2010
Registration Date	08/16/2011	Foreign Priority Date	NONE
Word Mark	TWIZZLERS, PULL 'N' PEEL, CANDY, CHERRY, PEEL IT, LOW FAT SNACK AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of three wavy bands colored red, white and pink. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. The word "TWIZZLERS" appears in white with a blue and red border. Intersecting the word is a design of red candy with the words "PEEL IT" and an arrow design, all in white. To the left of the candy design are the words "LOW FAT" in yellow and "SNACK" in white. Underneath "TWIZZLERS" are the words "PULL 'N' PEEL CANDY" in yellow. To the right of "TWIZZLERS" is a design of red cherries with green stems and the words "CHERRY ARTIFICIALLY FLAVORED" in white.		
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy		

U.S. Registration No.	4005538	Application Date	12/09/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	TWIZZLERS PULL 'N' PEEL CANDY CHERRY PEEL IT LOW FAT SNACK AND ARTIFICIALLY FLAVORED		
Design Mark			
Description of Mark	The mark consists of the following: three wavy bands colored red, white and pink from top to bottom. The color white in this portion of the mark is a transparent area and is not part of the mark. The matter shown in dotted lines shows positioning of the mark and is not part of the mark. Located in the red wavy band is the word TWIZZLERS in white with a blue and red border. Intersecting the word is a design of red candy with the words PEEL IT and an arrow design, all in white. To the left of the candy design are the words LOW FAT in yellow and SNACK in white. Underneath the word TWIZZLERS are the words PULL 'N' PEEL CANDY in yellow. At the bottom of the mark is a design of red cherries with green stems and the words CHERRY ARTIFICIALLY		

	FLAVORED in white.
Goods/Services	Class 030. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Candy

U.S. Registration No.	3077372	Application Date	06/27/2003
Registration Date	04/04/2006	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2004/03/27 First Use In Commerce: 2004/03/27 Lip balm, lip gloss		

U.S. Registration No.	3599520	Application Date	11/02/2007
Registration Date	03/31/2009	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2008/03/11 First Use In Commerce: 2008/03/11 Lottery tickets		

U.S. Registration No.	3711468	Application Date	02/25/2009
Registration Date	11/17/2009	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	The mark consists of the word "TWIZZLERS" in white stylized letters outlined in blue and red with a picture of a red strawberry with a green leafed top in the lower right hand corner.		
Goods/Services	Class 020. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31 Beds for household pets Class 028. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31 Pet toys		

U.S. Registration No.	3604197	Application Date	06/30/2008
Registration Date	04/07/2009	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31		

	Beds for household pets Class 028. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31 Pet toys
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U.S. Registration No.	3870680	Application Date	04/29/2010
Registration Date	11/02/2010	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2009/03/01 First Use In Commerce: 2009/03/01 Pens		

U.S. Registration No.	3893925	Application Date	05/11/2010
Registration Date	12/21/2010	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	The mark consists of the word "TWIZZLERS" in white stylized letters outlined in blue, then red, and then white, with a blue background showing between the letters. The entirety of this design is tilted so that the "T" is higher than the "S" with portions of a second red outline showing behind that design but at a more severe angle all layered on top of a blue outline of the word "TWIZZLERS" which is not angled and is partially hidden from view by the bottom of the letters "l", "e", "r" and "s". The partially-visible word "TWIZZLERS" appearing within the bottom blue outline is transparent.		
Goods/Services	Class 016. First use: First Use: 2009/03/01 First Use In Commerce: 2009/03/01 Pens		

U.S. Registration No.	3838714	Application Date	02/27/2009
Registration Date	08/24/2010	Foreign Priority Date	NONE
Word Mark	TWIZZLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 USB (universal serial bus) hardware		

Attachments	TWOZELS Notice of Opposition.pdf(111575 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/paul c. llewellyn/
Name	Paul C. Llewellyn
Date	05/20/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HERSHEY CHOCOLATE & CONFECTIONERY
CORPORATION,

Opposer,

v.

GOODY TWOS TOFFEE COMPANY, INC.

Applicant.

Opposition No. _____

Mark: TWOZELS
Serial No: 85/704,745
Filed: August 15, 2012
Published: January 22, 2013

Mark: TWOZELS and Design
Serial No: 85/704,767
Filed: August 15, 2012
Published: January 22, 2013

CONSOLIDATED NOTICE OF OPPOSITION

Hershey Chocolate & Confectionery Corporation (“Hershey”), a Delaware corporation located and doing business at 4860 Robb Street, Suite 204, Wheat Ridge, Colorado, believes that it will be damaged by the registration of the mark TWOZELS shown in Application Serial No. 85/704,745 and by the registration of the mark TWOZELS and Design shown in Application Serial No. 85/704,767, and opposes the same.

As grounds for opposition, Hershey alleges that:

1. Since at least 1928, Hershey and its predecessors in interest have used the well-known and famous TWIZZLERS® trademark on candy and other products, particularly licorice twists.

2. Today, TWIZZLERS products are manufactured and sold throughout the United States by Hershey's licensees, including The Hershey Company, a leading snack food company and one of the largest North American manufacturers of quality chocolate and non-chocolate confectionery products.

3. As a result of extensive and long-time use by Hershey, its licensees and its predecessors in interest, the TWIZZLERS brand – which has been in use for more than 85 years – is one of the best known candy brands in the country.

4. As set forth in the chart below, Hershey also owns a number of federal registrations for TWIZZLERS in connection with candy and confectionary products:

Trademark	Reg. No.	Int'l Class	Goods	Date of First Use
TWIZZLERS	680,105	30	Candy	1928
SUPER TWIZZLERS	1,237,555	30	Candy—namely, licorice	04/1979
TWIZZLERS PULL-N-PEEL	1,889,412	30	Candy	5/13/1994
TW (Design)	3,146,243	30	Candy	11/01/2002
TWIZZLERS	3,881,145	30	Frozen confections	1/25/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED MADE WITH REAL HERSHEY'S CHOCOLATE NATURALLY AND ARTIFICIALLY FLAVORED (and Design)	4,152,610	30	Candy	8/1/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED BLUE RASPBERRY AND ARTIFICIALLY FLAVORED (and Design)	4,120,463	30	Candy	8/1/2010

Trademark	Reg. No.	Int'l Class	Goods	Date of First Use
TWIZZLERS FILLED TWISTS LOW FAT SNACK TANGY FILLING SWEET & SOUR CHERRY KICK CITRUS PUNCH NATURALLY AND ARTIFICIALLY FLAVORED (and Design)	4,120,462	30	Candy	8/1/2010
TWIZZLERS NIBS CANDY LOW FAT SNACK LITTLE NIBBLES LICORICE NATURALLY AND ARTIFICIALLY FLAVORED	4,120,456	30	Candy	8/1/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED LICORICE NATURALLY AND ARTIFICIALLY FLAVORED TWIZZLERS TWISTS LICORICE NATURALLY AND ARTIFICIALLY FLAVORED (and Design)	4,107,653	30	Candy	8/1/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED LICORICE NATURALLY AND ARTIFICIALLY FLAVORED (and Design)	4,107,652	30	Candy	8/1/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED STRAWBERRY ARTIFICIALLY FLAVORED (and Design)	4,107,651	30	Candy	8/1/2010
TWIZZLERS TWISTS LOW FAT SNACK TOTALLY TWISTED STRAWBERRY ARTIFICIALLY FLAVORED (and Design)	4,107,650	30	Candy	8/1/2010
LOW FAT SNACK LITTLE NIBBLES TWIZZLERS NIBS CANDY CHERRY ARTIFICIALLY FLAVORED (and Design)	4,107,648	30	Candy	8/1/2010
LOW FAT SNACK BITE SIZED TWIZZLERS BITES CHERRY ARTIFICIALLY FLAVORED (and Design)	4,107,647	30	Candy	8/1/2010

Trademark	Reg. No.	Int'l Class	Goods	Date of First Use
TWIZZLERS, PULL 'N' PEEL, CANDY, CHERRY, PEEL IT, LOW FAT SNACK AND ARTIFICIALLY FLAVORED (and Design)	4,011,567	30	Candy	8/1/2010
TWIZZLERS PULL 'N' PEEL CANDY CHERRY PEEL IT LOW FAT SNACK AND ARTIFICIALLY FLAVORED (and Design)	4,005,538	30	Candy	8/1/2010

5. The TWIZZLERS family of trademarks also includes the following federally registered marks, also owned by Hershey, for goods other than candy or confectionary:

Trademark	Reg. No.	Class	Goods	Priority Date
TWIZZLERS	3,077,372	3	Lip balm, lip gloss	3/27/2004
TWIZZLERS	3,599,520	28	Lottery tickets	3/11/2008
TWIZZLERS (and Design)	3,711,468	20, 28	Beds for household pets; Pet toys	10/31/2008
TWIZZLERS	3,604,197	20, 28	Beds for household pets; Pet toys	10/31/2008
TWIZZLERS	3,870,680	16	Pens	3/1/2009
TWIZZLERS (stylized)	3,893,925	16	Pens	3/1/2009
TWIZZLERS	3,838,714	9	USB (universal serial bus) hardware	8/1/2009

6. As a result of Hershey's federal trademark registrations, as well as the extensive use and promotion of the TWIZZLERS mark for its candy and other products by Hershey's licensees and predecessors in interest, Hershey has acquired significant goodwill and public recognition of the mark, which has become a famous mark among consumers throughout the United States.

7. As a result of the long use, promotion and advertising, the TWIZZLERS mark has become a valuable asset of Hershey, serving as a symbol for the goods of Hershey's licensee and of the goodwill which is associated with those goods.

8. Despite Hershey's long prior common law and statutory rights, Applicant, with at least constructive notice of Hershey's federal registrations, and long after Hershey established rights in and to the mark TWIZZLERS, filed two trademark applications (Serial Nos. 85/704,745 and 85/704,767) to register the mark TWOZELS for a variety products in International Class 30, namely, "Chocolate covered pretzels; Chocolate topped pretzels; Kettle corn; Pretzels; Snack mix consisting primarily of crackers, pretzels and/or popped popcorn; Sugar-coated almonds; Toffee; Toffees."

9. Applicant's TWOZELS mark is highly similar to Hershey's TWIZZLERS mark in overall sound and appearance. Both are two-syllable words that begin with the same two-letter "TW" combination, followed by a "Z" sound, then an "L" sound, ending in "S."

10. Hershey believes and therefore alleges that Applicant's goods, as described in its application opposed herein, are or would be offered through the same or similar channels of trade to the same or similar customers or users as those goods rendered by Hershey's licensees under the mark TWIZZLERS, and are related to the goods of Hershey's licensees.

11. Hershey believes and therefore alleges that use and registration of the mark covered by Applicant's applications will damage Hershey, for the following reasons among others:

- a. customers and purchasers of the respective goods would be confused, mistaken, or deceived as to the source and origin of Applicant's goods rendered under the applied-for mark;

- b. customers and purchasers of the respective goods will assume, contrary to fact, that Applicant's goods come from, are associated with, sponsored by, approved by, or otherwise related to or affiliated with Hershey; and
- c. Applicant's use of the applied-for mark is likely to dilute the distinctive quality of the famous TWIZZLERS mark.

12. Applicant's applied-for mark so resembles Hershey's previously used and registered mark TWIZZLERS, when applied to the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

13. Applicant's applied-for mark so resembles Hershey's previously used and registered mark TWIZZLERS as to be likely, when applied to the goods set forth in Applicant's application, to falsely suggest a connection with the Hershey within the meaning of 15 U.S.C. § 1052(a).

14. Applicant's applied-for mark is likely to dilute the distinctive quality of Hershey's famous, distinctive and federally-registered mark TWIZZLERS within the meaning of 15 U.S.C. § 1125(c)(1).

WHEREFORE, Hershey respectfully prays that this Opposition be sustained and that registrations to Applicant be refused.

The Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Hershey's attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: May 20, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 20th day of May, 2013, I caused a true and correct copy of the foregoing Notice of Opposition to be served upon Applicant's attorney of record by postage prepaid first-class mail at the following address:

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